IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.555 OF 1995

The State of Maharashtra — Appellant

Vs.

1. Madhukar Parshuram Mane

2. Smt.Akkatai Parshuram Mane — Respondents (Org. Accused)

Mr.D.R.More, APP for State.

Mr.Rahul P. Walvekar for Resp.Nos.1 and 2.

CORAM: S.S.PARKAR & ANOOP V.MOHTA,JJ.

April 25, 2005.

ORAL JUDGMENT (PER S.S.PARKAR,J.)

1. This appeal is filed by the State against the order of acquittal recorded by the Asst. Sessions Judge, Kolhapur acquitting both the respondents-accused of the offences under Sections 304-B, 306 and 498-A read with Section 34 of IPC by the judgment and order dated 31st March 1995 in Sessions Case No.243 of 1992.

2. The prosecution case is that deceased Sunita was married to respondent no.1 on 30th May 1989. She had given birth to a male child during the wedlock. At the time of marriage the father of Sunita, PW 1 Dhondiram had given a golden chain weighing 1 1/4 tolas to the groom and one golden ganthan to Sunita. He had also given a sum of Rs.1000/- to the son-in-law for buying new clothes for the occasion of marriage. The prosecution has produced yadi at Exhibit 23 which is signed by both the sides. Initially for some period the couple lived happily when accused no.1 was running a grocery shop belonging to the joint family. Thereafter partition took place in which the grocery shop was allotted to the share of accused no.2, the mother-in-law of the deceased. That created the problem for accused no.1 as he had no regular source of income to maintain his family as he was jobless. He, therefore, had to sell golden ornaments even of his wife Sunita and incur debts. The accused then started harassing Sunita by asking her to bring money from her parents which she did not and, therefore, she used to be beaten and ill-treated by both the accused.

3. The incident had taken place on 26th May 1992

in the evening when Sunita poured kerosene on her person and set herself on fire. A little while before that accused no.2, the mother-in-law, had raised quarrel with Sunita and her husband gave her beating. As soon as both of them went outside the house Sunita set herself on fire. Seeing the flames in the house, her husband, mother-in-law and brother-in-law rushed inside the house. Her brother-in-law i.e. husband's brother extinguished the fire and thereafter Sunita was taken to CPR Hospital at Kolhapur where her statement (Exh.29) was recorded by the Magistrate followed by recording of her complaint (Exh.36) by the police officer. On the basis of the statement recorded by the police officer crime was registered against both the respondents-accused as she had alleged in her statement that mother-in-law used to harass her by demanding dowry and husband used to beat her very often. She succumbed to her injuries at about 11.30 p.m. same day. As per the medical certificate and the post mortem report Sunita had received 98 % burns and she died because of the shock due to burn injuries. The statements of the parents of Sunita and others were recorded by the police. Spot panchanama of the house where the incident had taken

place was drawn. After completion of the investigation the charge-sheet came to be filed and the case was committed to the Sessions Court.

4. Before the Sessions Court charges were framed for offences under Sections 498-A, 304-B and 306 read with Section 34 of IPC against both the accused to which the respondents-accused pleaded not guilty. On behalf of the prosecution nine witnesses were examined. The parents of Sunita, Dhondiram and Anandibai Chougule were examined as PWs 1 and 2. PW 3 is Rajashri Jadhav, the neighbour of Sunita's parents. PW 4 is Sambhaji Mandlik, the Executive Magistrate who recorded the dying declaration of the deceased. PW 5 is Dr.Deshpande who attended to the patient in CPR Hospital, Kolhapur. PW 6 is ASI Mane who recorded her statement which was treated as FIR on the basis of which the crime was registered against the respondents. PW 7 is Dr.Gandhi who had given treatment to Sunita in CPR Hospital. PW 8 is Head Constable Dongare of Laxmipuri Police Station and lastly PW 9 is Head Constable Jadhav attached to Karvir Police Station who had registered the crime on the basis of the dying declaration forwarded to him by Laxmipuri Police Station. The defence of both the

accused was that the end of saree of Sunita fell on the flame of stove and caught fire and, therefore, she received the burn injuries.

5. After considering the evidence on record the trial Court by the impugned judgment and order acquitted both the accused of all the offences with which they were charged which is impugned in this appeal filed by the State.

6. The statements of Sunita herself show that she had committed suicide by pouring kerosene on her person and setting herself on fire in the evening between 6 and 6.30 p.m. on the date of the incident. Thereafter she was immediately removed to the CPR Hospital at Kolhapur. As per the evidence of PW 5 Dr.Deshpande, Sunita was brought to the said hospital at about 7 p.m. on that day with burn injuries. He treated her and informed the police by letter (Exh.33) addressed to PSI, CPR Hospital Chowki, Kolhapur informing the police that the patient had 98 % burns and admitted at 7 p.m. As per the hospital case papers produced at Exh.34 the patient was conscious and well oriented at 7 p.m. At 7.05 p.m. also she was shown to be fully conscious and well

oriented and was asking for water to drink. She had become semi conscious at 10 p.m. and at 10.45 p.m. she was gasping. At 11 p.m. she had become unconscious and at 11.30 p.m. she was declared dead. As soon as intimation was given to the police by Dr.Deshpande, police requested the Executive Magistrate, Sambhaji Mandlik to record her statement. He immediately went to the hospital and asked the doctor to examine the patient and to verify whether she was conscious. Doctor examined the patient in his presence and informed him that she was conscious and there was no difficulty to record her statement. He obtained the certificate of the doctor in the margin of the papers in which he recorded her statement. At the time of recording the statement doctor was present there and no other person was there. After recording her statement which is produced at Exhibit 29 he had obtained the thumb impression on the original as well as the carbon copy. In her dying declaration she had stated that at about 6.30 in the evening after her husband beat her she poured kerosene on her person and lighted it by matchstick. Then her husband, mother-in-law and brother-in-law came inside the house and her elder brother-in-law tried to extinguish the fire and her

husband was standing nearby. She has stated that she burnt herself because of the harassment by her mother-in-law and beating by her husband. Her mother-in-law used to harass her by asking her to bring money from her parents. Her statement was recorded between 8.15 and 8.35 p.m. Immediately thereafter ASI Mane who was on duty at Laxmipuri Police Station at that time recorded her statement which is produced at Exhibit 36 on record. In that statement she has stated that her mother-in-law used to harass her by asking her to go to her parents and bring money. On that day her mother-in-law picked up a quarrel and her husband beat her. As soon as both of them went outside she, being fed up with the ill-treatment, poured kerosene on her person and set herself on fire. On seeing the fire her husband, mother-in-law and brother-in-law came inside the house and brother-in-law extinguished the fire and got her admitted to the CPR Hospital, Kolhapur. She has further stated that she set herself on fire because of the ill-treatment and demand of money from her mother-in-law and husband.

7. So far as the aforesaid two dying declarations are concerned, the veracity of the same cannot be

doubted. The first dying declaration was recorded about one hour after her admission to the CPR Hospital and about 1 and 1/2 hours after the actual incident of attempt to commit suicide. The Executive Magistrate PW 4 Mandlik has deposed that he asked the doctor to examine the patient and accordingly the doctor examined the patient and thereafter he recorded the statement of Sunita in the presence of the doctor himself. That is corroborated by Dr.Deshpande, PW 5 who had examined the patient and made an endorsement on the dying declaration in the margin. He has deposed that she was in a position to give her statement and was able to talk and understand the questions put to her and he had made endorsement that the patient was fit to give statement and he was there till recording of her statement by the Magistrate. He had also stated that no sedative was given to the patient upto recording of her dying declaration. The contents of the statement also show that the same could not have been falsely recorded by the Magistrate but the entire statement appears to have been given by Sunita who has stated as to the persons with whom she was residing and the ill-treatment given to her by the mother-in-law and the beating by husband for not

meeting the demand for money. On the similar lines is the statement recorded by ASI Mane PW 6 which was treated as FIR (Exh.36) and the crime was registered. In that Exhibit 36 also she has stated that her husband used to beat her on some or the other pretext at the instigation of his mother. Her mother-in-law used to harass her and ask her to go to the parents and demand money. On the date of the incident her mother-in-law picked up the quarrel at about 6.30 in the evening and her husband beat her. Though the said statement does not bear the endorsement of the Medical Officer the said statement having been recorded immediately after PW 4, the Executive Magistrate had recorded the dying declaration, the patient being conscious and able to make the statement, cannot be doubted. The hospital record shows that she had become semi conscious at about 10 p.m. that is much after her statement was recorded by ASI Mane which must have been recorded before 9 p.m., the Magistrate having finished recording her statement at 8.30 p.m. Apart from the fact that the medical papers show that at 7.05 p.m. the patient was fully conscious, Dr.Deshpande who was present had made an endorsement at 8.15 p.m. on the statement recorded by the Magistrate that she was conscious and

in a position to give statement. Moreover he was there upto 8.35 p.m. when the Magistrate had completed recording the statement and, therefore, it cannot be doubted that she was conscious at that time. Even Dr.Gandhi, PW 7 who had attended to her at the instance of Dr.Deshpande has deposed that when he examined her she was conscious, though was having 98 per cent burn injuries, and was able to understand the questions put to her. According to him he had prescribed one injection for the patient but had instructed that the injection should be given to the patient after recording her dying declaration as that injection was sedative.

8. Moreover the parents of Sunita have been examined. PW 1 Dhondiram, father of Sunita has deposed that his daughter was maintained nicely initially for six months. After the partition was effected in the family of accused no.1, the grocery shop was allotted to the share of accused no.2, who is the mother-in-law. He has also deposed that accused no.1 used to beat her and ill-treat Sunita and accused no.2 used to abuse her and instigate accused no.1. They used to make illegal demand. Similarly Sunita's mother Anandibai, PW 2 has deposed

that after the partition in the family of the accused when the grocery shop was run by accused no.2, accused no.1 was left with no source of income and, therefore, he became indebted to others. He had sold gold ornaments and could not repay the loan. He started demanding money from her daughter Sunita.

9. From the aforesaid evidence the prosecution has been able to prove that after the partition of the property in the family of the accused, accused no.1 was left with no source of income and, therefore, Sunita used to be harassed. There used to be demand for money by the accused persons from Sunita and she used to be harassed and ill-treated because she could not meet the demand. From the dying declarations of the deceased it is quite clear that Sunita committed suicide because of her harassment owing to the demand for dowry and the beating given to her by her husband. The said evidence squarely makes out a case that both the accused are guilty of offence under Section 498-A of IPC. The trial Court has disbelieved the evidence for demand of dowry on the ground that no figure was given though PW 3 Rajashri Jadhav, who was her classmate, has also deposed about the ill-treatment

to Sunita as told to her by Sunita herself and given figure of Rs.5000/- which was demanded from her by the accused persons. Even if we leave aside the evidence of these three witnesses i.e. parents and the neighbour, two statements given by Sunita immediately after the incident of commission of suicide leaves no doubt about the truthfulness of the contents of her statement that mother-in-law used to make demand for money and her husband used to give beating to her. Her mother-in-law used to pick up quarrels and her husband used to beat her on some or the other pretext.

10. The defence taken by the accused that she got burnt accidentally due to the flames of stove when the end of her saree caught fire does not appear to be true or even probable though the trial Court has accepted the possibility of the accidental burn of Sunita. We do not think that Sunita would go that far and state that she had committed suicide even though she got burnt accidentally as alleged by the defence. Sunita had a young son hardly two years old and, therefore, she would not think of falsely implicating her husband and mother-in-law if she had caught fire accidentally. No woman would ordinarily

falsely implicate her husband and bring her marriage to an end if she catches fire accidentally from the stove. Moreover if she had wanted to falsely implicate her husband and mother-in-law she would have rather alleged that she was set on fire by her husband and mother-in-law than take up the blame on herself for having tried to commit suicide. She has clearly stated that being fed up by the harassment caused to her by her mother-in-law and due to her husband beating her, she had poured kerosene on her person and set herself on fire. The spot panchanama (Exh.10) also corroborates her version in asmuchas the room where she caught fire was smelling of kerosene. If it had been the case of accidental fire there would have been no smell of kerosene. At the place of incident kerosene can was found which was having capacity of 5 litres. Kerosene found in it was hardly one litre. Thus Sunita catching fire accidentally is out of question.

11. The trial Court has not believed the dying declaration also on the ground that it was not in the question and answer form though the learned Public Prosecutor had cited in the trial Court the judgments to the effect that merely because the dying

declaration was not recorded in the question and answer form it cannot be disbelieved. The trial Court has also doubted the truthfulness of the dying declaration on the ground that Sunita having extensive burns to the extent of 98 per cent and her mouth having been burnt she would not be in a position to give statement. Such conclusion can be arrived only by disbelieving the two independent witnesses like Executive Magistrate Sambhaji Mandlik who had recorded the dying declaration and Dr.Deshpande who had made endorsement and has deposed that he was present throughout when the Magistrate was recording the statement of Sunita. Even the hospital record shows that she was fully conscious and well oriented. Even another doctor examined by the prosecution PW 7 Dr.Gandhi has deposed that Sunita was fully conscious and he had instructed not to give injection which was having sedative effect until her dying declaration was recorded. Thus the reasoning of the trial Court disbelieving the dying declaration on the ground that Sunita was not in a position to make dying declaration is ill-founded.

12. The trial Court has also disbelieved the evidence about the dying declaration on the ground

that while the Executive Magistrate had deposed that white colour gown was provided by the hospital to Sunita which was on her person, ASI Mane has stated that as there were 98 per cent burns to the patient she was completely naked. The substance of the allegations made in both the dying declarations is similar. Even if the evidence of ASI Mane is not considered about the recording of statement of Sunita by him, the evidence of Executive Magistrate who had recorded the statement earlier supported by the Medical Officer can be believed. The two dying declarations cannot be disbelieved on the ground that one witness said that she was covered with gown and another witness said that she was naked. The incident had taken place in May 1992 and the evidence was being given by the witnesses in March 1995 i.e. after a period of almost about three years and, therefore, the witnesses may not remember whether at that time Sunita was covered or was naked. It is trite that the doctors normally would not leave the patient naked when the Executive Magistrate had gone there to record her statement nor when the police officer was recording her statement. The patient having 98 per cent burns may be normally kept naked in the privacy of the hospital but when the outsider

comes and when the Executive Magistrate and the police officer go there to record the statement, the patient being a lady, must have been covered with at least some thin sheet of cloth.

13. The question is what offence can be said to to have been committed by the accused. So far as offence under Section 498-A is concerned, there can be no doubt that since Sunita was subjected to harassment for not meeting unlawful demand of money or for failure to meet that demand it would attract clause (b) of Section 498-A of IPC. Even clause (a) of Section 498-A of IPC would be attracted by the conduct of accused no.1 very often beating her and accused no.2 harassing her by making unlawful demand which drove Sunita to commit suicide. Thus both the accused have committed offence under Section 498-A of IPC.

14. The accused were charged for offence of dowry death under Section 304-B of IPC. No doubt the marriage having taken place in May 1989 and the incident being of May 1992, the death of Sunita was caused by burns within seven years of her marriage. There is also evidence to show that soon before her

death Sunita was subjected to cruelty or harassment by her husband and mother-in-law and she was beaten by him due to the quarrel which was picked up by her mother-in-law. But in order to attract Section 304-B of IPC the prosecution is also required to prove that the harassment was in connection with any demand for dowry. The only person who could have stated about it was Sunita herself and in none of her statements she has in terms stated that the beating given by husband or the quarrel picked up by her mother-in-law immediately before she was driven to commit suicide related to or was in connection with the demand for dowry and, therefore, we will have to give benefit of doubt to both the accused so far as offence under Section 304-B of IPC is concerned.

15. As regards charge under Section 306 of IPC is concerned, what is required is that the woman should have been driven to commit suicide due to the abetment by either accused no.1 or accused no.2 or both. Here also the act of the accused must have been the direct cause to drive Sunita to commit suicide. Sunita has clearly stated in both her statements (Exhibits 29 and 36) that just before she committed suicide her mother-in-law picked up a

quarrel and her husband gave her beating and being fed up of the harassment meted out to her by the two accused, on that day taking advantage of the fact that both the accused stepped out of their house, she poured kerosene on her person and set herself on fire. By accused going out does not mean that they had gone elsewhere or left the house for going to some other place. Both the accused had happened to step out of their house after she was beaten by the husband. If they had left the house for going to some other place they would not have come inside the house seeing the flames in their house. The fact that she got 98 per cent burns would also mean that she had attempted to commit suicide and, therefore, did not even raise screams to call anybody for help to extinguish the fire which would have been the case if she was burnt due to her saree catching fire accidentally from the flames of the stove. She had herself tried to commit suicide and, therefore, allowed herself to burn and did not raise any shouts or cried for help as she wanted to die. The harassment was being meted out to her for several months and that day also just before she committed suicide she had received beating from her husband due to the quarrel raised by her mother-in-law and,

therefore, both the accused can be said to have committed the offence under Section 306 of IPC. The order of acquittal recorded by the trial Court is illegal as the reasons given for acquitting the accused are against the evidence on record. We, therefore, have no hesitation in allowing this appeal.

16. In the result, the order of acquittal recorded by the 4th Asst. Sessions Judge, Kolhapur in Sessions Case No.243 of 1992 against both the respondents-accused is set aside and the respondents are convicted for offences under Sections 306 and 498-A of IPC. For the offence under Section 306 of IPC the respondents-accused are sentenced to RI for three years and to pay a fine of Rs.1000/- each in default to suffer further imprisonment for three months. For the offence under Section 498-A of IPC both the accused are sentenced to RI for two years and to pay a fine of Rs.1000/- each in default to suffer further imprisonment for three months. The substantive sentences on both the counts shall run concurrently. The accused shall be entitled for the benefit of set off under Section 428 of Criminal

Procedure Code. Both the respondents-accused shall surrender to their bail bonds forthwith. Appeal is allowed accordingly.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)